

## **School Food Authorities Acting as a Collective Unit in the Control and Use of Donated Foods**

### **Purpose:**

This instruction sets forth the policy that clarifies the requirements and options for School Food Authorities (SFAs) acting as a collective unit (including school co-ops or consortia) in performing activities relating to donated foods. It also clarifies the requirements for the distributing agency with respect to such SFAs.

### **Scope:**

Sponsors participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

### **Description:**

School food authorities (SFAs) participating in the National School Lunch Program (NSLP) are more commonly performing food service activities collectively, including activities with donated foods, in the interest of minimizing costs and increasing efficiency. SFAs sometimes perform such activities as part of a school cooperative (co-op) or consortium, which are often legally defined entities subject to specific State laws or requirements. In other cases, a small SFA may enter into an agreement with a larger SFA, or with several other SFAs, to collaborate in the performance of specific activities. This memorandum clarifies the requirements and options for such SFAs acting as a collective unit (including school co-ops or consortia) in performing activities relating to donated foods. It also clarifies the requirements for the distributing agency with respect to such SFAs.

### **Requirements and Options for the SFA Collective Unit**

In performing any activities with donated foods, the SFA collective unit is subject to the same requirements, and may exercise the same options, as a single SFA. It is not considered a sub-distributing agency, as defined in 7 CFR 250.3. For example, the SFA collective unit may:

- Submit orders for donated foods to the distributing agency, or, if permitted by the distributing agency, submit orders directly to FNS.
- Store donated foods together with commercially purchased foods, and maintain a single inventory record of such foods (i.e., utilize single inventory management).

- Prepare meals utilizing donated foods at the kitchen facilities of one SFA, and provide for delivery of such meals to other SFAs to serve to their schoolchildren.
- Obtain the services of a commercial processor, storage facility, food service management company, or other commercial enterprise to provide services relating to donated foods for all SFAs in the collective unit, in accordance with Federal procurement requirements in 7 CFR Part 3016 or 3019, as applicable, and with other applicable requirements in Parts 210 and 250.

### **Charter Schools and Other Small SFAs**

Charter schools and other small SFAs, such as private nonprofit schools and residential child care institutions, may especially benefit from the efficiencies in performing donated food activities as a collective unit. As some small SFAs lack storage or kitchen facilities, it may be necessary for them to take such options, or to seek other solutions. A small SFA without kitchen facilities may, for example, have a larger SFA receive its donated food shipments, store the foods, and prepare the meals at its kitchen facility, and then transport the meals to the small SFA to be served to its schoolchildren.

A small SFA without kitchen facilities may obtain the services of a commercial enterprise to receive donated food shipments and prepare meals for delivery to the school facility. However, the use of donated foods to prepare meals at a commercial facility is considered "processing" under Part 250, and would be subject to the requirements for the processing of donated foods in Subpart C of Part 250. Such requirements may be burdensome for both the SFA and the distributing agency. Hence, before taking such action, the SFA must consider the burden of compliance with such requirements; and must consult with the distributing agency. An SFA may also obtain the services of a private nonprofit organization, such as a hospital, to prepare meals. However, such organization would be considered a food service management company, and its use of donated foods to prepare meals would be subject to the requirements for donated foods in Subpart D of Part 250. In either case, the SFA should consult with the State agency administering NSLP (which may be different from the distributing agency), in order to ensure compliance with Federal procurement requirements.

### **Distributing Agency Requirements**

The distributing agency must enter into an agreement with each SFA participating in NSLP, in accordance with § 250.12(b). In order to ensure compliance with applicable requirements in Part 250, the distributing agency must require each SFA to include the donated food activities to be performed collectively with other SFAs in such agreement, or must require the school collective unit to provide such information to it in another format- e.g., in a copy of the school collective unit's agreement or contract.

The distributing agency must offer SFAs the "commodity offer value" of donated foods, in accordance with § 250.58(b), and must work with SFAs to determine how to provide such donated foods to them in an efficient and cost-effective manner. The distributing agency may offer the commodity offer value to a school collective unit as a total of each SFA's individual

commodity offer value, if this is acceptable to SFAs. Once donated foods are delivered and received at the school collective unit's storage facility, the distributing agency is not responsible for further monitoring such foods. Hence, any question arising among SFAs in the collective unit with respect to subsequent distribution or use of donated foods must be resolved by the SFA collective unit. However, the distributing agency must inform each SFA of its individual commodity offer value.

In order to ensure the efficient and cost-effective distribution of donated foods, and to minimize the workload in the control and use of such foods, the distributing agency may encourage SFAs to receive donated food shipments, and to conduct other donated food activities, as a collective unit. This would especially apply to small SFAs that lack the capacity to store donated foods or prepare meals. The distributing agency may also limit the number of processing agreements it enters into with processors that use donated foods to prepare meals at their commercial facilities for SFAs. However, the distributing agency must consider other options, in consultation with SFAs, in order to facilitate the distribution of donated foods to SFAs for use in their nonprofit school food service.

**SOURCE:** FOOD DISTRIBUTION NATIONAL POLICY MEMORANDUM, DECEMBER 14, 2009.